

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: C. CONTI et al.

Confirmation No.: 2052

Application No.: 09/785,398

Group Art Unit: 1761

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Examiner: L. Tran

For: SUGAR WAFERS

Attorney Docket No.: 88265-412

DECLARATION OF CLAUDIA CONTI UNDER 37 C.F.R. § 1.132

Commissioner for Patents
Washington, D.C. 20231

Sir:

I, Claudia Conti, do declare that:

1. I am a citizen of Italy and currently reside at Shiba Shirogane Hills #403, Shiroganedai 5-12-3, Minato-ku, Tokyo 108-0071, JAPAN. I am one of the inventors of the invention described in the pending application titled "SUGAR WAFERS."

2. I previously held the position of Product Technologist at Nestlé UK, Beverage Division in Croydon, UK. I was employed at Nestlé UK in Croydon from October, 1999 to June, 2001. Before that position, I held several jobs in various capacities including acting as a Food Research Senior Scientist at the Nestlé R&D Center in York, England from September, 1997 to September, 1998 and April, 1999 to September, 1999. While employed as Food Research Senior Scientist, I helped develop chocolate and biscuit confectionery products including researching and developing the baking characteristics of sugar wafers. I hold a 1994 Degree in Food Science and Technology from the Università degli Studi in Milan and I am a Chartered Food Technologist, certified in July, 1998 at Milan University.

3. I am no longer employed by Nestlé or any of its affiliates and have not been employed by them for almost two years. I do consider myself as one of ordinary skill in the art in the field of the present invention.

4. I have reviewed and understand the above-identified patent application, the pending claims, the Office Action, and the references cited by the Examiner in the above-identified application. Specifically, these references include U.S. Patent No. 5,709,898 to Biggs ("Biggs") in view of relevant portions of "The Wholefood Catalog," relevant portions of the cookbook "Cookies & Crackers," and U.S. Patent No. 4,629,628 to Negro ("Negro"). I am making the following statements as one of ordinary skill in the art in support of the patentability of the claims in this application.

5. The above-identified application is directed to a sugar wafer batter including either: (i) a grain component including wheat flour and uncooked cereal grits in an amount sufficient to be baked into a crisp wafer; a sugar additive comprising sucrose, a reducing sugar, or a mixture thereof in an amount sufficient to provide a sweet taste to the wafer; and water in an amount sufficient to form a batter; or (ii) a grain component including wheat flour in an amount sufficient to be baked into a crisp wafer; a sugar additive comprising sucrose and a reducing sugar in an amount sufficient to provide a sweet taste to the wafer; and water in an amount sufficient to form a batter. Advantageously, the sugar wafer obtained by baking this batter is sufficiently flexible under ambient conditions for more than 40 seconds to at least 70 seconds to as much as 100 seconds or more after baking to enable further processing of the wafer.

6. The application shows the surprising and unexpectedly long period of flexibility after baking that we achieved with this invention. The example was prepared by me or under my direction and control. The wafers prepared from the sugar wafer batter of the invention, as described in paragraph 2 above, and by the process for making wafers described in the application, provided a wafer that was harder and crunchier than conventional wafers. More importantly, the resultant wafers of the invention remained flexible for over 100 seconds, which is significantly longer than standard sugar wafers such as the type disclosed in Biggs.

7. Biggs teaches a pre-formed food core around which a sugar wafer including flour and invert sugar is formed by heating a portion of the wafer to have sufficient flexibility to shape the baked wafer around its pre-formed food core. In fact, Biggs is specifically directed to a process of localized heating after baking to solve the well known problem of wafers becoming rigid rapidly after baking is completed. Thus, Biggs cannot

teach an improved sugar wafer batter composition as presently claimed in our application and does not even teach the presence of water in its wafer composition before cooking. Also, Biggs has a completely different solution of localized heating that does not suggest to one of ordinary skill in the art our solution of improving the sugar wafer batter to provide sufficient flexibility in the baked wafer. Biggs' solution is contrary to this in that he suggests to take a rigid wafer and reheat it, a far more complicated and cumbersome procedure than simply modifying the batter composition to achieve post-baked wafer flexibility.

8. The Wholefood Catalog is directed to dough-based products, and thus does not even teach products that are directed to wafers. The Wholefood Catalog teaches that one can add a small amount of cooked grits to batters for muffins, griddle cakes, or quick breads, for extra moisture and flavor. The Wholefood Catalog's teaching of cooked grits is contrary to what we are claiming, as our invention uses uncooked components in a batter that are later baked into a sugar wafer. The Wholefood Catalog does not suggest that uncooked grits can be substituted for cooked grits in order to impart post baking flexibility. In fact, the Wholefood Catalog adds cooked grits to dough products that are already naturally flexible even after baking, such as muffins, griddle cakes, and breads. In view of these facts, one of ordinary skill in the art would not have been motivated to combine certain uncooked ingredients from a dough-based product with those of a batter material or product that is designed to be crispy before consumption. A sugar wafer with dough-based characteristics would be highly undesirable for our intended uses, since it would likely be viewed as being too soggy by consumers.

9. The Cookies & Crackers reference teaches the same thing as Biggs, which is that conventional sugar wafers have a limited processing window in which they are flexible. After that time, the conventional wafers of Cookies & Crackers must be returned to the oven for reheating to regain flexibility. Actually, Cookies & Crackers clearly teaches that its wafers rapidly stiffen, especially since it states to only heat a few at a time and to shape them immediately after removing them from the oven. This reheating solution to the problem is similar to that of Biggs, who suggests directed heating instead of reheating in an oven. In both cases, a conventional sugar wafer batter was used that failed to provide sugar wafers having sufficient flexibility under ambient for a sufficient time after baking. Their solution involving the use of post baking heating is entirely different from our use of different ingredients in the batter prior to baking to achieve flexibility after baking.

10. Negro does not teach a sugar wafer batter that includes cereal grits and also fails to teach inclusion of a reducing sugar and sucrose together, as presently claimed in our application. Negro teaches formulations for sugar wafers should be delicate and crisp, and that care must be taken in formulating and baking wafers because the results can be unpredictable, such as being crisp only on the outside but not the inside. Negro teaches that wheat flour, or a combination of wheat and another flour, is particularly suitable for crisp wafer sheet formulations such as its two-sheet wafer structures. But Negro does not teach wafer sheets or formulations designed to be flexible after baking, nor the use of the presently claimed components to achieve this property.

11. There is no motivation to combine the limited flexibility wafers of Biggs and Cookies & Crackers with the crisp sheets of Negro. Biggs teaches away from the need to maintain flexibility after baking, because it chooses another solution--to reheat the wafer after baking to regain flexibility. Therefore, Biggs has no need to provide an improved sugar wafer batter composition, and would not have motivated one of ordinary skill in the art to do so. The Wholefood Catalog teaches different dough products that already have flexibility and do not need special formulation or treatment to obtain their final products, as is the case with the presently claimed sugar wafer batters. One of ordinary skill in the art clearly would not have been motivated to combine parts of a dough product teaching with that of a sugar wafer product or batter, as these materials are quite different. Actually, the Wholefood Catalog is completely irrelevant to all of the other references and our invention, as it focuses solely on dough-based products and does not teach anything about sugar wafer formulations or the processing problems of such sugar wafers. Also, Negro does not even teach that sugar wafers can be bent, and would not have suggested suitable formulations for increased flexibility as per our invention.

12. The cited references, whether taken on their own or in some combination, just do not teach a sugar wafer that advantageously is sufficiently flexible for an increased length of time as presently claimed. Even the combination of references does not teach the claimed formulation provides a superior flexibility to conventional wafer formulations that avoids the need to re-heat like Biggs and Cookies & Crackers. Also, even the combination of references does not teach the use of grits in a batter (*i.e.*, uncooked

components) or inclusion of a reducing sugar combined with sucrose, particularly to achieve the result we claim in this patent application.

13. It is thus my opinion and judgment, as one of ordinary skill in the art, that Biggs alone, or in combination with the other cited references, does not suggest the claimed invention. There was no motivation to combine Biggs and even Cookies & Crackers with The Wholefood Catalog, since The Wholefood Catalog discusses only dough products and not sugar wafer formulations. Even the combination would not have motivated one of ordinary skill in the art at the time of the invention to modify the different product and process of Biggs with the doughs of The Wholefood Catalog to obtain the sugar wafer batter and process claimed by the above-identified application. In fact, the claimed products, and the claimed process for making flexible sugar wafers, are different from the product and process of Biggs and the cited references as a whole as discussed above. Further, it is my opinion and judgment that even combining all the cited references fails to teach the claimed invention, as discussed herein, because even the combination lacks important features claimed in our invention that provide the advantageous result of additional flexibility in the resulting wafer products.

14. I further declare that all statements made herein of my knowledge are true and all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Dated: 23.03.03

Claudia Conti
Claudia CONTI